UNITED NATIONS

GENERAL
ASSEMBLY

Distr.
LIMITED

A/CN.9/WG.IV/WP.52
27 November 1991

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
Working Group on
International Payments
Twenty-fourth session
Vienna, 27 January - 7 February 1992

PROVISIONAL AGENDA

1. Election of officers

2. Adoption of the agenda

3. Possible issues to be included in the programme of future work on the legal aspects of electronic data interchange (EDI)

4. Other business

5. Adoption of the report

Notes on the provisional agenda

At its twenty-first session (1988), the Commission considered a proposal to examine the need to provide for the legal principles that would apply to the formation of international commercial contracts by electronic means. It was noted that there existed no refined legal structure for the important and rapidly growing field of formation of contracts by electronic means and that future work in that area could help to fill a legal vacuum and to reduce uncertainties and difficulties encountered in practice. The Commission requested the Secretariat to prepare a preliminary study on the topic. 1/

1/ Official Records of the General Assembly, Forty-third Session, Supplement No. 17 (A/43/17), paras. 46 and 47, and ibid., Forty-fourth Session, Supplement No. 17 (A/44/17), para. 289.

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At its twenty-third session (1990), the Commission had before it a report entitled "Preliminary study of legal issues related to the formation of contracts by electronic means" (A/CN.9/333). The report summarized work that had been undertaken in the European Communities and in the United States of America on the requirement of a writing as well as other issues that had been identified as arising in the formation of contracts by electronic means. The efforts to overcome some of those problems by the use of model communication agreements were also discussed. The Commission requested the Secretariat to continue its examination of the legal issues related to the formation of contracts by electronic means and to prepare for the Commission at its twenty-fourth session a report that would analyse existing and proposed model communication agreements with a view to recommending whether a model agreement should be available for worldwide use and, if so, whether the Commission should undertake its preparation. The Commission expressed the wish that the report would give it the basis on which to decide what work might be undertaken by the Commission in the field. 2/

At its twenty-fourth session (1991), the Commission had before it the requested report, entitled "Electronic Data Interchange" (A/CN.9/350). The report described the current activities in the various organizations involved in the legal issues of EDI and analysed the contents of a number of standard interchange agreements already developed or being currently developed. It also suggested that there was a need for a general framework that would identify the issues and provide a set of legal principles and basic legal rules governing communication through EDI. It concluded that such a basic framework could, to a certain extent, be created by contractual arrangements between parties to an EDI relationship and that the existing contractual frameworks that were proposed to the community of EDI users were often incomplete, mutually incompatible, and inappropriate for international use since they relied to a large extent upon the structures of local law. The report pointed out that work by the Commission in this field would be of particular importance since it would involve participation of all legal systems, including those of developing countries that were already or would soon be confronted with the issues of EDI. It also suggested that possible future work for the Commission on the legal issues of EDI might concern the subject of the replacement of negotiable documents of title, and more particularly transport documents, by EDI messages. That was the area where the need for statutory provisions seemed to be developing most urgently with the increased use of EDI.

The Commission was agreed that the legal issues of EDI would become increasingly important as the use of EDI developed and that the Commission should undertake work in that field.

As regards the suggestions reflected above, there was wide support for the suggestion that the Commission should undertake the preparation of a general framework identifying the legal issues and providing a set of legal principles and basic legal rules governing communication through EDI. The Commission was agreed that, given the number of issues involved, the matter needed detailed consideration by a Working Group.

2/ Ibid., Forty-fifth Session, Supplement No. 17 (A/45/17), paras. 38 to 40.

As regards the preparation of a standard communication agreement for worldwide use in international trade, support was given to the idea that such a project might be appropriate for the Commission. However, divergent views were expressed as to whether the preparation of such a standard communication agreement should be undertaken as a priority item. Under one view, work on a standard agreement should be undertaken immediately for the reasons expressed in the report, namely that no such document existed or seemed to be prepared by any of the organizations that were primarily concerned with worldwide unification and harmonization of legal rules and that the Commission would be a particularly good forum since it involved participation of all legal systems, including those of developing countries that were already or would soon be confronted with the issues of EDI. The prevailing view, however, was that it was premature to engage immediately in the preparation of a standard communication agreement and that it might be preferable, until the next session of the Commission, to monitor developments in other organizations, particularly the Commission of the European Communities and the Economic Commission for Europe. It was pointed out that high-speed electronic commerce required a new examination of basic contract issues such as offer and acceptance, and that consideration should be given to legal implications of the role of central data managers in international commercial law.

After deliberation, the Commission decided that a session of the Working Group on International Payments would be devoted to identifying the legal issues involved and to considering possible statutory provisions, and that the Working Group would report to the Commission at its next session on the desirability and feasibility of undertaking further work such as the preparation of a standard communication agreement. The Commission also took note of the suggestion by the Secretariat to prepare a uniform law on the replacement of negotiable documents of title, and more particularly transport documents, by EDI messages. 3/

The Working Group is composed of all States members of the Commission. These are:

Argentina, Bulgaria, Cameroon, Canada, Chile, China, Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Egypt, France, Germany, Hungary, India, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Lesotho, Libyan Arab Jamahiriya, Mexico, Morocco, Netherlands, Nigeria, Sierra Leone, Singapore, Spain, Togo, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Yugoslavia.

Item 1. Election of officers

The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3. Possible issues to be included in the programme of future work on the legal aspects of electronic data interchange (EDI)

The Working Group will have before it a note by the Secretariat listing a number of issues possibly to be included in the programme of future work on the legal aspects of EDI (A/CN.9/WG.IV/WP.53). The Working Group may wish to use the note as a basis for its deliberations.

3/ Ibid., Forty-sixth Session, Supplement No. 17 (A/46/17), paras. 311 to 317.

The following documents will be made available at the session:

(a) Report of the Secretary-General on the Legal Value of Computer Records (A/CN.9/265);

(b) Report of the Secretary-General on Electronic Data Interchange - Preliminary study of legal issues related to the formation of contracts by electronic means (A/CN.9/333);

(c) Report of the Secretary-General on Electronic Data Interchange (A/CN.9/350).

Item 5. Adoption of the report

The Working Group may wish to adopt, at the close of its session, a report for submission to the twenty-fifth session of the Commission (to be held from 4 to 22 May 1992 in New York).

Meetings

The session of the Working Group will take place from 27 January to 7 February 1992 at the Vienna International Centre. No meeting will be scheduled for Thursday, 6 February, in order to allow for the preparation of the draft report of the session. Meeting hours will be from 09:30 to 12:30 and from 14:00 to 17:00, except on Monday, 27 January 1992, when the session will commence at 10:30.